

Federal Transit Administration (FTA) Required Clauses (Professional Services/A&E)

This procurement is being funded, in whole or in part, with federal funds through Federal Transit Administration (FTA). As consequence of that funding, the following FTA mandated provisions are included in this proposal.

1. No Obligation by the Federal Government

- (1) The City and the Proposer acknowledge and agree that:
Notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to the Contract and shall not be subject to any obligations or liabilities to the City, Proposer, or any other party (whether or not a party to that contract) pertaining to any matter resulting from this Contract.
- (2) The Proposer shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-proposer who will be subject to its provisions.

2. Program Fraud and False or Fraudulent Statements or Related Acts

The Proposer acknowledges and agrees that:

- (1) The provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the Contract, the Proposer certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which work under this Contract is being performed. In addition to other penalties that may be applicable, the Proposer further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Proposer to the extent the Federal Government deems appropriate.
- (2) If the Proposer makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Proposer, to the extent the Federal Government deems appropriate.
- (3) The Proposer shall include the above two (2) clauses in each subcontract financed in whole or in part with federal assistance provided by FTA and each such clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. Access to Records

- (1) In accordance with 49 C.F.R. 18.36(i), the Proposer shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Proposer which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Pursuant to 49 C.F.R. 633.17, the Proposer shall provide the FTA Administrator or his authorized representatives including any PMO contractor access to Proposer's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Proposer shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy such excerpts and transcriptions as are reasonably needed.
- (3) Proposer shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Proposer agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (4) FTA does not require the inclusion of these requirements in subcontracts.

4. Federal Changes

The Proposer shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract (the FTA Master Contract) between the City and the FTA, as they may be amended or promulgated from time to time during the term of the Contract. Proposer's failure to so comply shall constitute a material breach of the Contract.

5. Civil Rights

The following requirements apply to this Contract:

- (1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Proposer shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Proposer shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.
- (2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at

49 U.S.C. § 5332, the Proposer agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq ., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Proposer agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Proposer shall comply with any implementing requirements FTA may issue.

- (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and federal transit law at 49 U.S.C. § 5332, the Proposer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Proposer shall comply with any implementing requirements FTA may issue.
- (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Proposer agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Proposer shall comply with any implementing requirements FTA may issue.

- (3) The Proposer shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- (4) For assistance with a contract clause incorporating the requirements of the newDBE rule in 49 CFR Part 26, contact the FTA HelpLine at www.ftahelpline.com.

6. Termination

- (1) Termination for Convenience. The City may terminate this Contract, in whole or in part, at any time by written notice to the Proposer when it is in the City's sole and unfettered opinion, it is in the City's best interest to do so. The Proposer shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Proposer shall promptly submit its termination claim to the City for payment. If the Proposer has any property in its possession belonging to the City, the Proposer shall account for the same, and dispose of it in the manner the City directs.

- (2) Termination for Default. The City may terminate this Contract if: (1) Proposer does not deliver supplies in accordance with the delivery schedule set forth in the Contract; (b) if the Contract is for services and the Proposer fails to perform in the manner specified in the Contract; or, (c) Proposer fails to comply with any other provisions of the Contract. Termination shall be effected by serving a notice of termination upon Proposer setting forth the manner in which the Proposer is in default. The Proposer will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by the City that the Proposer had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Proposer, the City, after setting up a new delivery or performance schedule, may allow the Proposer to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure: In case of a termination for breach or default, the City may, in its sole and unfettered discretion, allow the Proposer ten (10) calendar days within which to cure the defect. Should a cure period be granted, the notice of termination will state the time period within which cure is permitted together with other appropriate conditions.

If the Proposer fails to remedy the breach or default of any of the terms, covenants, or conditions of this Contract to the City's satisfaction within ten (10) calendar days after receipt by the Proposer of written notice from the City setting forth the nature of said breach or default, then, and in that event, the City shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude the City from also pursuing all available remedies against Proposer and its sureties for said breach or default.

Waiver of Remedies for any Breach: Should the City elect to waive its remedies for any breach by Proposer of any covenant, term or condition of this Contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

7. Disadvantaged Business Enterprises

For this RFP the City has established that the goal, for the utilization of Disadvantaged Business Enterprises owned, operated, and controlled by socially and economically disadvantaged individuals is 8.76%

8. Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in

the contract. The Proposer shall not perform any act, fail to perform any act, or refuse to comply with any requests of the City that would cause the City to be in violation of the FTA terms and conditions.

9. Certification Regarding Debarment and Suspension

The Proposer certifies that neither it nor its “principals” [as defined at 49 C.F.R. 29.105(p)] are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an federal department or agency. The Proposer shall be required to submit a certified copy of this certification, see page 11 of this document, with this proposal.

10. Disputes

Disputes arising in the performance of this Contract that are not resolved by agreement of the parties shall be decided in writing by the Contract Specialist (Lead) or his designee. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Proposer mails or otherwise furnishes a written appeal to the Public Transit Director or the Director’s designee. In connection with any such appeal, the Proposer shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Public Transit Director or the Director’s designee shall be binding upon the Proposer and the Proposer shall abide by the decision.

Performance During Dispute: Unless otherwise directed by the City, the Proposer shall continue performance under the Contract while matters in dispute are being resolved.

Claims for Damages: Should either party to this Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose act it is legally liable, a claim for damages therefore shall be made in writing to such other party within five (5) calendar days after the first observance of such injury or damage.

Remedies: Unless this Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the City and the Proposer arising out of or relating to this Contract or its breach will be decided by arbitration if the parties mutually agree, or in a State court of competent jurisdiction within the State of Arizona.

Rights and Remedies: The duties and obligations imposed by the Contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the City or the Proposer shall constitute a waiver of any right or duty afforded any of them under this Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed upon in writing.

11. Lobbying

- (1) Proposer certifies that no federally appropriated funds have been paid or will be paid, by or on behalf of the Proposer, to any person for influencing or attempting to influence an officer or employee of the City, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federally appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of the City, any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Proposer shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
- (3) The Proposer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- (4) The Proposer certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Proposer understands and agrees that the provisions of 31 U.S.C. A3801, et.seq., apply to this certifications and disclosure if any.
- (5) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

12. Clean Air

The Proposer shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Proposer shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Proposer shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or part with federal assistance provided by FTA.

13. Clean Water

The Proposer shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. Proposer shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Proposer shall also include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

14. Fly America

Contractor shall comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. If a foreign air carrier was used, Proposer shall submit an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. Proposer shall include the requirements of this section in all subcontracts that may involve international air transportation.

15. Seismic Safety (A&E for new buildings and additions)

The Proposer agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Proposer also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

16. Patent Rights (R & D)

- (1) General – If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the Contract to which this attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Proposer agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
- (2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Proposer's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of high education, individual), the City and the Proposer agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

- (3) The Proposer also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

17. Rights in Data and Copyrights Requirements (R & D)

- (1) The term “subject data” used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punch cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.
- (2) The following restrictions apply to all subject data first produced in the performance of the contract to which this attachment has been added:
 - (a) Except for its own internal use, the City or Proposer may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the City or Proposer authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - (b) In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for “Federal Government purposes,” any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, for Federal Government purposes,” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party.
 - 1. Any subject data developed under that Contract, whether or not a copyright has been obtained; and
 - 2. Any rights of copyright purchased by the City or Proposer using Federal assistance in whole or in part provided by FTA.
 - (c) When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, the City and the Proposer performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA’s license in the copyright to any subject data developed in

the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for the City or Proposer's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.

- (d) Unless prohibited by state law, upon request by the Federal Government, the City and the Proposer agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the City or Proposer of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither the city nor the Proposer shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - (e) Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - (f) Data developed by the City or Proposer and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that the City or Proposer identifies that data in writing at the time of delivery of the contract work.
 - (g) Unless FTA determines otherwise, the Proposer agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- (3) Unless the Federal Government later makes a contrary determination in writing, irrespective of the Proposer's status (i.e., a large business, small business, state government or state instrumentality, etc.), the City and the Proposer agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Governmental Grants, Contracts and Cooperative Agreements." 37 C.F.R. Part 401.
 - (4) The Proposer also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

18. Energy Conservation

Proposer shall comply with mandatory standards and policies relating to energy efficiency that are contained in the State of Arizona Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

19. Conformance with Intelligent Transportation System (ITS) Architecture

This project will receive a systems engineering analysis to ensure it conforms to the National ITS Architecture and complies with the locally-approved plan for regional ITS architecture

21. Notification of Federal Participation

To the extent required by law, in the announcement of any third party contract award for goods or services (including construction services) having an aggregate value of \$500,000 or more, the City shall specify the amount of federal assistance to be used in financing that acquisition of goods and services and to express the amount of that Federal assistance as a percentage of the total cost of that third party contract.

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DEBARMENT AND SUSPENSION CERTIFICATION

The Contractor certifies, by submission of this proposal and certification, that neither it nor its principals 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency as defined by 49 CFR Part 29.

If the Consultant is unable to certify to the statement above, it shall attach an explanation to this certification.

By signing and submitting its proposal, the Contractor certifies as follows:

The certification is a material representation of fact relied upon by the CITY. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR Part 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Authorized Official _____

Title of Authorized Official _____

Date _____

COMPANY NAME _____